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Delaware Department of Correction Compliance Report

Submitted Pursuant to the Memorandum of Agreement Between the
United States Department of Justice and the State of Delaware
Regarding the Delores J. Baylor Women's Correctional Institution, the
Delaware Correctional Center, the Howard R. Young Correctional
Institution and the Sussex Correctional Institution

June 23, 2008

Department of Correction

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INTRODUCTION

This Compliance Report is submitted pursuant to the Memorandum of Agreement (“MOA”) between the United States Department of Justice (“DOJ”) and the State of Delaware (the “State”) regarding the Delores J. Baylor Women’s Correctional Institution (“BWCI”), the Delaware Correctional Center (“DCC”)¹, the Howard R. Young Correctional Institution (“HRYCI”) and the Sussex Correctional Institution (“SCI”).² The purpose of this Compliance Report is to provide the DOJ with current information regarding the State’s progress implementing the Delaware Department of Correction Action Plan dated April 30, 2007 (the “Action Plan”), and steps taken by the State to ensure compliance with each of the substantive provisions of the MOA.³

Key Accomplishments

Effective July 1, 2007, the State entered into a two-year contractual agreement with Correctional Medical Services (“CMS”) to provide medical and mental health services to the inmate population housed at all of the Department of Correction (“DOC”) facilities, including the four Facilities subject to the MOA. Under the contract, CMS is required to fully staff the medical and mental health services provided to offenders housed at all DOC facilities. CMS employs a Regional Medical Director, Regional Vice President, Regional Ombudsman, Regional Manager, Regional Mental Health Director, Regional Psychiatry Director, Regional Dental Director and

¹ On June 3, 2008, Delaware Governor Ruth Ann Miner signed a bill renaming the Delaware Correctional Center, the James T. Vaughn Correction Center.

² Baylor, HRYCI, DCC, and SCI are also referred to individually as a “Facility” and collectively as the “Facilities” in this Compliance Report.

³ This Compliance Report is prepared entirely as a result of the compromise of disputed claims brought by the United States Department of Justice against the State of Delaware. Nothing contained herein shall constitute or is intended to be interpreted as an admission of legal liability or an independent statement of fact. The statements contained herein are intended to be without prejudice to future or collateral legal actions, defenses or positions on behalf of the State of Delaware, or its agencies, departments, and employees. Additionally, the statements and documented actions by the State contained herein are subsequent remedial measures as set forth in Federal and State Rules of Evidence 407 and are taken with the express purpose to remediate any identified deficiency in the provision of healthcare services to inmates within the custody of the State of Delaware Department of Correction.

State Director of Nursing (“DON”). Further, at each Facility, CMS employs a site Health Services Administrator (“HSA”) and DON to oversee the medical and mental health care provided to the inmate population.

In addition to expanded staffing requirements established in the July 1, 2007 CMS contract, an Audit Tool was implemented under the Third Amendment to the previous service contract between CMS and DOC. This Audit Tool was carried forward into the July 1, 2007 CMS contract. The Audit Tool is used to evaluate CMS compliance with written performance standards that are based on standards established by the National Commission on Correctional Health Care (“NCCHC”), CMS protocols in effect at the time of the audit; and any policies, protocols, procedures or clinical pathways currently existing or adopted in the future by DOC. Pursuant to the service contract, audits are performed on a quarterly basis in the areas of Intake, Chronic Care, Specialty Referrals, Mental Health Services, Sick Call visits and medication administration. This audit mechanism provides for financial penalties that are imposed if CMS does not achieve specific compliance targets at a Facility.

Substantial modifications and improvements to the Delaware Automated Correction System (“DACS”) medical module, which are described at length in the Action Plan,⁴ were implemented at all DOC facilities. Additional enhancements to DACS and medical vendor staff training are ongoing. The updated DACS medical module serves as a vital tool for ensuring compliance with medical and mental health care standards. Further, the updated DACS system allows the DOC and CMS to obtain statistical information regarding types of inmate care being provided and areas of need at each of the Facilities.

MEDICAL AND MENTAL HEALTH CARE

(1) Standard:

The DOC continues to strive for compliance with each substantive standard set forth in the MOA. OHS and CMS meet weekly to address problem areas and establish timelines and plans

⁴ See the DOC Action Plan, Section 3a , *available at*:
<http://doc.delaware.gov/pdfs/Delaware%20DOC%20Action%20Plan.pdf>

for addressing these concerns. Additionally, OHS solicited advice from experts and consultants when needed. For example:

- The OHS worked closely with Monitoring Team experts to draft any additional policies as necessary.
- The Delaware Divisions of Health and Social Services (“DHSS”) and Public Health (“DPH”) were consulted regarding immunization and communicable disease reporting practices. In addition, DOC has been working with DPH on obtaining and administering Hepatitis and influenza immunizations.
- The OHS is also working with DPH regarding possible HIV, Syphilis, Gonorrhea and Chlamydia testing of offenders. Testing would be targeted to those offenders who are at high risk of contracting such diseases.
- The OHS worked with the Delaware Division of Substance Abuse and Mental Health to develop protocols for providing methadone maintenance to pregnant opiate addicts incarcerated in a DOC Facility, in accordance with MOA requirements.
- The OHS consulted with the DHSS, Office of the Medical Examiner (“OME”) regarding autopsies and medical file reviews of all offenders whose death occurs while in DOC custody. OME has now agreed to conduct full autopsies for any inmate death in custody.

(2) Policies and Procedures:

On November 19, 2007, the DOC implemented its health care policies under Chapter 11, Health Services of the DOC policy manual.⁵ In addition, DOC recognizes the need to consider policy development and implementation on a continual basis. During the April 2008 site visits, the Monitoring Team was presented with draft versions of site specific procedures for all Facilities covered by the MOA. At the recommendation of the Monitoring Team, DOC and CMS will form procedure review committees at all Facilities. Each committee will be comprised of

⁵ The DOC Health Services policies are available at <http://www.doc.delaware.gov/> (see Chapter 11).

Facility medical and mental health staff, Facility security staff and members of the OHS. The committee will be responsible to review the site specific procedures and make any recommended changes. All additional policies and Facility-specific procedures will be submitted to the DOJ for approval before they are implemented.

(3) Record Keeping:

(a) As noted above, the DACS updated medical module was implemented in 2007. Enhancements to the medical module were made in the areas of intake screening, appointment scheduling, medical transfers, chronic care, sick call, outside consult tracking, tracking pregnancy care of offenders, mental health care, administrative segregation, dental care and general reporting functions. CMS has established a policy that designated staff members are to be assigned “Super User” status for training purposes. The “Super User” is responsible for ongoing DACS training of medical and mental health staff at each Facility. Additional enhancements to the DACS system have been implemented, with continual enhancements anticipated.

(b) As of January 24, 2008 CMS reports that all medical records positions required under the DOC-CMS contract, with the exception of one, are currently staffed. Due to the high turnover rate of offenders who are admitted and released from HRYCI, the volume of inactive medical records at that Facility greatly exceeded levels at other DOC sites and created needs that were unique to that Facility. This volume also made it difficult to track medical files of offenders who were returning to the Facility, and to ensure that a full medical record was available to providers.

In May 2008, the archived filing room at HRYCI was relocated to a renovated area. The new area provides for double the storage space than the previous archived filing room. CMS has reported that additional staff has been hired to properly file and organize the new space. The current archive room is also located next to the relocated intake exam room, allowing the intake nurse easy access to the offender’s medical file if his last incarceration was at HRYCI. DOC recognizes that access to the offender’s medical history promotes continuity of care for the offender.

CMS reports that additional temporary staff has been hired to assist each Facility with medical records tasks. The temporary medical records personnel provided 320 additional hours at BWCI to assist with the organization of the archive and active medical file rooms. CMS further reports that it conducts continual training of its medical records staff at all of the Facilities to ensure a unified and full medical record.

(4) Medication and Laboratory Orders:

DOC policy requires that Facility medical staff ensure timely responses to medication orders and laboratory tests. Practitioners now have access through a secured Internet portal to view lab results from the laboratory services vendor. The Audit Tool is being used to monitor compliance with DOC policy. In addition to the quarterly DOC-CMS contractual audits, each Facility conducts a comprehensive quality assurance review to track compliance with DOC policy. CMS further reports that weekly reviews of medication and laboratory order timeliness are conducted as part of its CQI process at all Facilities.

(5) Job Descriptions and Licensure:

CMS reports that it continues to ensure that all staff members are appropriately licensed and credentialed. The Regional Medical Director conducts a peer review of all practitioners on a quarterly basis. Under the DOC-CMS contract, CMS is required to provide the DOC with an updated certification list on a monthly basis. Once received, the OHS Senior Fiscal Officer reviews the certification list to ensure its accuracy and request additional detail, when indicated.

(6) Staffing:

The DOC currently employs a Health Director, who oversees management of DOC health care services; a Mental Health Treatment Services Specialist; Substance Abuse Treatment Service Specialist; Compliance Coordinator; Administrative Assistant; and Senior Fiscal Administrative Officer in the OHS. The DOC is also recruiting candidates for two other positions: an Advanced Nurse Practitioner and Quality Assurance Administrator. The Governor's recommended budget for 2009 provides for a DOC-employed Chief Physician. These additional positions would assist the DOC OHS's efforts to assure compliance with the MOA and DOC Health Services policies.

As was reported in the July 30, 2007 DOC Compliance Report, 39.15 new health care staff positions were approved by the Delaware DOC, representing a 20% increase in staffing, and the July 1, 2007 contract with CMS was renegotiated to fund those additional positions. The Delaware General Assembly subsequently approved the budget required to fund these new positions. The DOC has contractual remedies available for addressing staffing deficiencies under the July 1, 2007 contract with CMS, and continues to actively monitor performance in this area.

CMS's recruitment report for June 2, 2008 indicates that the state wide staffing levels are at 89.4% for all DOC Facilities. CMS indicates that its recruiting efforts are ongoing to fulfill any current or anticipated vacancies. CMS offers enhanced recruitment plans with incentives in order to bolster its efforts to obtain potential employment candidates. Further, CMS reports that it has offered enhanced orientation and cross training of current employees along with Facility specific research in order to improve staff retention.

(7) Medical and Mental Health Staff Management:

In addition to management services provided by the DOC OHS personnel described above, medical and mental health staff management is provided through the CMS regional office in Dover, DE. The CMS regional office staff includes a Regional Ombudsman, a Regional Medical Director, Dietician, Regional Dental Director, Regional Psychology Director, Senior Regional Administrator, Regional Director of Nursing, Vice President of Operations, and a Regional Mental Health Director.

At HRYCI, SCI and BWCI, a full-time site DON and HSA are currently employed to manage the health care services at each of those Facilities. At DCC, the DON position is vacant and the HSA position will be vacant on June 30, 2008. DOC recognizes the importance of maintaining a stable medical and mental health staff management team at all Facilities. CMS reports that it is actively recruiting to fill those vacancies. Because a large population of offenders is housed at DCC, a full-time assistant DON and assistant HSA are also currently included in the staffing at that Facility, and those positions were filled as of the date of this Report. All Facilities have a full-time Mental Health Director employed to oversee the mental health care of the offenders.

(8) Medical and Mental Health Staff Training:

CMS currently provides monthly in-service training for both medical and mental health staff. The Infection Control Coordinators at all Facilities are also scheduled to attend the infectious disease program provided by Christiana Health System. In addition, all mental health professionals employed by CMS and providing services at the Facilities are trained and legally qualified to provide mental health counseling services under guidelines established by the State of Delaware. OHS continues to work with the DOC Employee Development Center (“EDC”) to ensure that appropriate DOC staff is trained on medical and mental health needs of offenders. All documentation regarding training attendance, curriculum and records is kept at the DOC Administration Office and is available for the Monitoring Team’s review.

(9) Security Staff Training:

Please see response to numbers (28), (32) and (43).

(10) Medical Screening:

Intake nurses complete an intake medical and mental health screening form using the DACS system. DOC policies require the intake medical screening be performed within two hours of arrival at a Facility. This screening is performed by nursing staff, and includes a mental health screening. If an inmate answers “yes” to any mental health screening questions, the inmate automatically receives a referral and assessment by a mental health professional within twenty-four hours. Additionally, nurses performing intake screening also have discretion to refer offenders for a mental health assessment. DOC policy requires the intake nurse to call mental health staff immediately if he or she believes the person poses a risk to themselves or others. In addition to mental health issues, the medical screening is structured to address serious medical conditions, and to identify acute medical needs, infectious diseases, chronic conditions, physical disabilities, and potential for drug and alcohol withdrawal. Once the information is entered into DACS, the appropriate medical and mental health appointments are automatically scheduled for the offender within the required time frames. To ensure that all offenders receive a full and adequate intake screening, the DACS system provides monitoring reports indicating whether required intake screenings have been performed and what percentage have been performed within the required two hours within arrival to the Facility. These reports are available to OHS, as well as the HSAs and DONs at each Facility, and are used by the DOC and CMS to ensure

compliance with DOC intake screening policies. In addition to other metrics, OHS measures utilization of DACS when auditing CMS pursuant to the contract between DOC and CMS.

(11) Privacy:

Please see response to (18).

(12) Health Assessments:

According to DOC policy, a health assessment is performed within seven days of an offender's arrival at a Facility. When the intake process is completed, DACS automatically schedules appointments for the inmate's health assessment and tuberculosis skin test checks (if applicable), as well as appointments to address any mental health, chronic care, or other significant health care needs identified during intake. Further, once the initial health assessment is completed, DACS automatically schedules all follow up periodic health assessment appointments. Pursuant to DOC policy, a chronic care patient will be assessed based on level of acuity, but at least annually, while offenders less than 40 years of age are to have a periodic health assessment every five years. Offenders over 40 years of age are to have a periodic health assessment every other year.

Under NCCHC standards and the DOC's policies, any inmate who was previously incarcerated in a Delaware DOC facility and received a health assessment within the previous twelve months now receives an intake screening, as well as a chart review performed by medical staff. If the chart review and intake screening do not indicate any change in the inmate's health status from the prior health assessment, a new full health assessment is not required. Monitoring reports generated by DACS are available to the OHS, HSAs and DONs to ensure compliance with the time frames established under this policy and to track health assessments.

(13) Referrals for Specialty Care:

The DOC policies require referrals for specialty care to be completed within 40 days of the initial referral date. For routine requests with wait times exceeding 30 days, the patient is to be seen by the primary care physician at 30-day intervals. If the primary physician believes that the clinical presentation warrants more expeditious scheduling of the appointment, the Regional Medical Director is to be contacted and is responsible for assuring that necessary arrangements are made.

The efforts to expedite the appointment are to be documented in the progress note. DOC policy requires follow-up requests to be scheduled in accordance with the outside consultant's recommendations unless the primary care practitioner documents an alternative plan in the medical record. In March 2008, CMS implemented a policy requiring follow-up forms to be used at all Facilities to assist in tracking offender care upon return from an outside consult. Further, the DOC Audit Tool provides for quarterly monitoring of this process to ensure compliance. Any failure to adhere to DOC policy may result in contractual penalties.

Specialty care referrals are also being monitored through the Facility quality assurance process and monthly reporting of specialty care logs by the Facility HSA for OHS review to ensure compliance with DOC policy. These reports are generated monthly, and included with other monthly reports submitted by CMS to the OHS as part of a contractual requirement. The same specialty care consult reports are also produced by CMS for analysis and discussion at monthly Medical Audit Committee ("MAC") meetings, and the upgraded DACS system has also enhanced the DOC's ability to track outside consults. Problems and delays identified through these efforts are addressed on an ongoing basis by CMS and OHS staff.

(14) Treatment or Accommodation Plans:

Offenders with significant medical conditions whose behavioral issues may compromise their medical care or those with extreme or complex medical issues are classified as Special Needs patients. Members of OHS, Facility medical and mental health staff along with Facility security staff meet on a routine basis to discuss the offenders' medical issues, strategies for dealing with the issues, outcomes to achieve and plans of action on how to achieve those goals. Notes from the meetings are documented in the offender's medical record and updated as required.

Currently, each site HSA receives notification from the DOC Classification Department of any offenders scheduled for release within thirty days. The HSA also has access of offenders' release information through the DACS system. The HSA then forwards the list to the appropriate medical, mental health and dental disciplines for discharge and after-care planning. Discharge planning is performed for offenders with serious medical or mental health issues, and a record of the plan is maintained in the medical record. Contractual special case management is provided for offenders with HIV disease who are scheduled for release. DOC is currently

consulting with DPH regarding the possibility of becoming more directly involved with the discharge planning for those offenders with HIV.

(15) Drug and Alcohol Withdrawal:

DOC policy provides that offenders experiencing life threatening intoxication or withdrawal are sent to an acute care facility, as clinically indicated. Additionally, the Regional Medical Director, in coordination with the OHS and in response to recommendations from the Monitoring Team, has revised the nursing protocols for alcohol and drug withdrawal. Training was provided to the medical staff on the updated protocols, and the new protocols have been implemented at all Facilities. Under the MOA, methadone maintenance is offered to pregnant offenders who are addicted to opiates and/or participating in a legitimate methadone maintenance program when they enter a Facility.

To date, two pregnant offenders have been identified as candidates for methadone maintenance since the MOA went into effect, and the DOC made arrangements for this service to be provided through a State-approved methadone clinic. The DOC is also currently working with the Delaware Division of Substance Abuse and Mental Health to develop protocols for methadone maintenance during pregnancy and notes that a specialist managing an addicted offender's pregnancy may conclude that methadone maintenance is contraindicated in some circumstances. The DOC anticipates that if this occurs, methadone would be used to manage the pregnant inmate's withdrawal from opiates under the direction of an appropriate specialist.

(16) Pregnant Offenders:

CMS is currently providing care and treatment for approximately thirteen pregnant females. As part of the intake screening, all females receive a urine pregnancy test. Any female with a positive pregnancy test result is placed on the pregnancy log, receives prenatal vitamins, and is managed by the Facility's OB/Gyn provider. Pregnant offenders are given appointments with the OB/Gyn nurse practitioner and must be seen by the nurse practitioner within seven days of initial intake.

After the OB/Gyn nurse practitioner performs an assessment, the schedule for ongoing treatment is based on the pregnant inmate's particular needs. If complications arise, immediate

consultation with the OB/GYN nurse practitioner is provided. If clinically indicated, the OB/Gyn nurse practitioner will refer the inmate to the obstetrician. In addition, the OB/Gyn nurse practitioner is at Baylor on a weekly basis to evaluate pregnant offenders. Pregnant inmates with HIV disease are also seen by an HIV specialist who coordinates care with the OB/Gyn practitioner. This coordination helps to assure that appropriate medications are given to prevent perinatal transmission of HIV. Compliance with this policy is monitored on a quarterly basis through the DOC-CMS contractual audits.

(17) Communicable and Infectious Disease Management:

CMS employs Infection Control Coordinators at all of the Facilities. DOC policy sets out specific guidelines regarding the type of monitoring that must be conducted for certain types of infectious disease. Offenders with communicable diseases are tracked and monitored by OHS and the Facility Infection Control Coordinator using information collected in DACS through the intake screening, health assessment and other relevant databases to ensure compliance with MOA and DOC standards. Monthly reports are sent to the OHS by CMS for analysis, and communicable disease reports are provided to the DPH as required. CMS reports that it has also restructured its HIV and Hepatitis C management programs in an effort to provide improved offender care from initial enrollment into the program through discharge into the community after release from DOC. This includes additional training for infectious disease nurses and practitioners, offender dietary consultation and offender mental health intervention. All communicable and infectious disease statistics are available for review at each Facility by the Monitoring Team.

(18) Clinic Space and Equipment:

The DOC has been working with CMS to identify additional space in the Facilities for examination and treatment, medical records and equipment storage, and staff offices. These efforts have led to the relocation of archived medical records at HRYCI,⁶ and additional space has been provided at HRYCI for the intake nurses' station in the booking and receiving area. As noted previously, these changes will allow easy access to archived medical files of offenders who were incarcerated at HRYCI during the last two years and provide additional privacy for offenders during the medical intake procedure. This change will also help avoid the creation of

⁶ See ¶3, above.

duplicate and/or incomplete medical files. A new medication room at HRYCI was also opened in May 2008.

In the new medication room, additional storage space for medications with new custom cabinetry and countertops, which improve security of controlled substances and sharps, and maximize workspace for the medication nurses and pharmacy technician, has been created. The previous medication room is currently being remodeled for use as an exam room for Infirmary patients. This will allow for additional privacy during the exams, as they will no longer have to be performed in the Infirmary cell. To maximize the use of existing clinic space and avoid congestion in the medical unit, CMS has also increased clinic hours at HRYCI. Nurse sick call, physicals, and some dental procedures are now being performed during the early evening hours or weekends, when other clinics are not operating.

At SCI, cabinetry and countertops were constructed to provide additional work space for the staff in the main medical clinic. Two interview rooms were also built, which allow the nurse performing sick call to speak with the inmate in a private setting. In addition, the HSA has relocated her office, making office space available for one of the providers in the main medical clinic. DOC continues to explore options for creating additional office space, mental health and dental treatment rooms. The DOC also is evaluating options for expanding the current medication room and providing additional exams rooms in the current main medical clinic.

Construction is expected to begin in September 2008 at BWCI, to provide additional medical and mental health work space. DOC is also exploring relocation of the current medication room and infirmary bed space at BWCI. Further, three cells are in the process of being renovated to accommodate offenders on suicide observation status.

At DCC, options for providing existing clinic and work space for medical and mental health staff are being explored. This includes the possibility of relocating the office space in the Security Housing Unit ("SHU") to provide additional work space for the medical and mental health staff assigned to the SHU building. Other approaches for expanding clinic and work space that are being evaluated include changing breakfast serving times to accommodate morning medication. Work has also begun to move one of the Special Needs Units ("SNU") to the general population

compound. Further, cleaning efforts are underway in the SHU housing units to power wash piping and other areas of the tiers which are difficult to perform with everyday cleaning tasks.

The DOC has purchased new equipment and replaced or repaired outdated equipment where necessary. This includes, since January 2008, the purchase of new stretchers, IV pumps, exam tables, hospital beds, lifts, dental autoclaves and other medical equipment. The OHS also purchased office and clerical equipment to assist medical and mental health staff at all Facilities. Additional equipment needs are being evaluated and addressed by OHS.

As was discussed in the DOC's July 2007 Compliance Report,⁷ each Facility implemented an action plan to address cleanliness issues raised in the first Monitor's Report. Under that plan, primary responsibility for cleaning floors, walls, and providing any other janitorial services in the medical units now rests with the DOC. CMS is responsible for tasks that are inappropriate for inmate workers, as well as for cleaning, de-cluttering and organizing areas that are primarily under CMS control. For example, CMS is responsible for sharps and hazardous waste disposal, and for maintaining medication preparation surfaces and medication carts. Each Facility continues to monitor medical unit cleanliness under the action plan; the DOC and CMS jointly perform environmental inspection rounds on a monthly basis to ensure that the medical units are conforming to NCCHC standards for cleanliness.

Finally, DOC actively continues to research options for expanding medical and mental health treatment space at all of the Facilities. A consulting firm retained by the DOC is currently in the final stages of conducting a construction and remodeling feasibility study and evaluating clinic space issues at each Facility.

ACCESS TO CARE

(19) Access to Medical and Mental Health Services:

Currently, offenders who want to obtain health or mental health care services fill out and submit a sick call form. This is a generic form used for all medical, mental health and dental requests.

⁷ See Delaware Department of Correction Compliance Report, at 7 and Appendix 4, *available at*: <http://doc.delaware.gov/Compliance%20Report.pdf>.

Inmates submit the forms into a secure repository, a process that preserves the confidentiality of inmate health information. Nursing staff is required to collect sick call requests on a daily basis and distribute the requests to the appropriate medical unit providers. CMS personnel responsible for collecting sick call forms are required to fill out a “pick up” sheet documenting that the daily collection is made. The DOC now also requires randomly scheduled reviews of the pick up logs, which allows the OHS to monitor compliance with this policy. Additionally, enhancements to DACS now allow the OHS to monitor compliance with sick call policies as part of its quality assurance process. For example, nurse sick call reports are printed from DACS and used in DOC-CMS contractual quarterly audits. Compliance with daily collection requirements, adherence to sick call protocols, and the provision of face-to-face evaluations and follow-up care are some of the issues being monitored during these quarterly audits. CMS reports that it has also implemented site-specific procedures and CQI studies regarding collection of sick call slips.

(20) Isolation Rounds:

CMS reports that it currently follows NCCHC policy regarding medical care for segregated offenders. A patient roster is printed from DACS, and mental health rounds are documented on the roster to ensure all patients are seen. The logs are maintained at the Facility in a central location, and copies are sent to the CMS Regional Mental Health Director on a monthly basis for review. In the event an inmate is referred for follow-up medical or mental health treatment, this information is documented in the inmate’s medical record. Further, DOC policy requires that sick call rounds be conducted on a daily basis by nursing staff.

(21) Grievances:

Pursuant to DOC policy, the time transpiring between the date of an initial medical grievance and the final appeal response is not to exceed 180 days. As of June 18, 2008, there were no outstanding medical grievances over 180 days at BWCI, SCI, or HRYCI. Currently there are 44 outstanding grievances at DCC that exceed 180 days from the time of filing. Due to the large number of medical grievances at DCC, the CMS Regional Ombudsman continues to direct a majority of her time investigating and resolving the outstanding medical grievances. DOC and CMS continue to work collaboratively on reducing both the number of outstanding grievances and the time required for resolving grievances. Under the DOC – CMS contract, the proper and timely resolution of medical grievances is the responsibility of CMS, and requires the

participation of CMS staff. Nevertheless, DOC has also provided additional staffing to facilitate and expedite the process of resolving grievances at all Facilities. Unresolved grievances reports are produced in DACS to track outstanding grievances by the OHS and Facility medical management.

Previously, all medical and mental health grievances were filed in DACS under a generic “Health Issues” category. In order to track trends and issues with grievances, three separate categories were created to differentiate between mental health, dental and medical grievances. After the initial investigation is completed on the medical grievance, a hearing before the Medical Grievance Committee (“MGC”) can be requested if the inmate is not satisfied with the initial response to the grievance.

To protect the confidentiality of an inmate’s information, three members of the medical vendor staff and/or OHS staff conduct MGC hearings. DOC grievance officers are also present to record the hearing information in DACS along with any other DOC staff as security necessity dictates. These are in-person hearings where the inmate has the opportunity to discuss the medical grievance. After listening to inmate testimony and reviewing the inmate’s medical file, the MGC decides whether to uphold or deny the inmate’s grievance. The DOC has also developed an MGC log, which is used to track follow-up on MGC decisions. The log contains information regarding cases heard by the MGC, the date of the hearing, and whether decisions were upheld and require follow-up (*e.g.*, a physician visit). Further, if an inmate’s grievance was denied by the MGC, the HSA and site Medical Director review the inmate’s grievance with the inmate and explain the reason for the denial. Upon the completion of a MGC hearing, the site HSA is responsible for compiling data for the MGC log and producing its contents to the OHS within two business days. During the subsequent month’s Facility MAC meeting, the HSA is required to provide updates on the grievances in the MGC log with the date that resolution occurred. This ensures that grievance outcomes promised to the inmate at the time of the MGC hearing are appropriately tracked and that the Facility HSA addresses systematic issues.

CHRONIC DISEASE CARE

(22) Chronic Disease Management:

If an inmate presents with chronic care needs at intake or sick call, DOC policy requires the nurse to complete the chronic care referral form to initiate a clinical evaluation. At the conclusion of the clinical evaluation, the clinician is required to document a treatment plan. The treatment plan should include diagnostic and therapeutic interventions, along with patient education for each chronic illness. The clinician determines the frequency of chronic care appointments, based on the degree of disease control being achieved and maintained.

The physician is expected to order medications and laboratory tests as needed, and to time those orders so that medications do not run out before the next visit and so that laboratory test results are available at the time of the next appointment. CMS is required to follow NCCHC standards for chronic disease care and treatment, and these standards are outlined in the CMS Chronic Care Guidelines handbook. Further, the DACS scheduling function for chronic care appointments automatically schedules the next inmate visit within the time frame indicated by the provider. Continual monitoring using DACS reports, the Audit Tool and the site quality assurance process are used to ensure compliance with chronic care policies and standards.

(23) Immunizations:

As of June 18, 2008, 31 juveniles were housed at HRYCI. Upon intake, the Infection Control Coordinator reviews the juvenile's immunization history. CMS continues to work collaboratively with DOC, the Delaware Department of Services for Children, Youth and Their Families and the DPH Immunization Program to obtain the records, if available, of all juveniles housed in DOC facilities. One tool being used by the DOC and CMS to assist in this process is the State's immunization records online data bank (known as "VACAttack"), which allows the Infection Control Nurse access to the State's data regarding all immunizations that were administered in Delaware. Once juvenile immunization information has been obtained, the DOC ensures that CMS updates the juvenile's immunizations as needed, in accordance with nationally recognized guidelines and Delaware school admission requirements.

In addition, DOC has obtained Hepatitis A and Hepatitis B vaccinations for 1520 offenders and about 200 DOC security staff. DOC is working collaboratively with CMS to identify offenders who are candidates for the hepatitis immunizations because of chronic conditions or other risk factors. All immunization information is maintained in the inmate's unified medical record.

MEDICATION

(24) Medication Administration and (25) Continuity of Medication:

Nurses are required to provide medications at times reflected on the Medication Administration Records ("MAR"), in accordance with medication orders. Normally, first medication passes are done during the morning hours, with a second and third medication pass occurring during the afternoon and evening hours, respectively. Additional passes include lunchtime blood glucose checks and insulin injections as indicated. At the end of a shift, the medication administration nurse reviews the Medication Administration Records to identify patients who missed or declined medications, and is required to follow up appropriately. If a patient is non-compliant for three consecutive doses of medication, the patient is scheduled to meet with a provider to discuss the noncompliance and its possible ramifications for the inmate's medical treatment. Pursuant to CMS policy, the site DON consistently monitors medication administration, with ongoing medication administration education provided to staff responsible for distributing medication to offenders. Further monitoring of this policy is conducted through quarterly DOC-CMS contractual audits and the Facility's quality assurance process to ensure that new medication orders are implemented and delivered in a timely manner. This process is also used to monitor ongoing compliance with the medication scheduled ordered by a provider, the appropriate maintenance of MARs, and medication continuity.

(26) Medication Management:

DOC policy requires medication storage rooms to be locked at all times, and inspections by DOC compliance personnel confirm adherence to this policy. Keys to medication rooms are kept with a member of the nursing staff and used to enter and exit the dispensary. CMS currently has two different policies governing medication disposal. For narcotics and other controlled substances, a log is maintained at each Facility documenting the receipt, administration, and disposal of the

medication. All other medications that are discontinued (because an inmate has been released or for medical reasons) are returned to the vendor pharmacy by CMS.

EMERGENCY CARE

(27) Access to Emergency Care:

Offenders who require acute emergency care are transported from a Facility to an offsite health care provider for emergency evaluation and treatment as necessary. The Regional Medical Director reviews each emergency care case to ensure that staff took appropriate measures before the emergency occurred, and to identify alternatives that might have averted the emergency and the need for acute care.

(28) First Responder Assistance:

Currently, all DOC correctional employees attend a nine-week course, “Correctional Employee Initial Training,” which is provided by the DOC, before commencing employment at a DOC Facility. During this training, all security staff receives seven hours of CPR training and an additional seven hours of First Aid training. This class also includes training on Automatic Emergency Defibrillator machines. All security staff receives another seven hours of training on “Special Medical Topics.” This class provides training on such issues as contagious disease and blood borne pathogens. CMS medical professionals teach all three classes.

In addition to the initial orientation training, security staff receives yearly refresher training on CPR, First Aid, and use of Automatic Emergency Defibrillator machines. Refresher training for “Special Medical Topics” is provided every three years. All security staff employees are issued equipment to be used during first line emergency response (CPR masks, latex gloves and a glove pouch) as part of their uniforms. Logs of employee training attendance are maintained by the DOC Employee Development Center located at the DOC Central Administration Building and available for inspection by the Monitoring Team.

MENTAL HEALTH CARE

(29) Treatment:

Mental Health Services are available to all offenders at each Facility; qualified mental health professionals provide these services.

(30) Psychiatrist Staffing:

CMS reports on its June 3, 2008 recruitment report that only 1.15 full-time contracted psychiatrist staff position is vacant.

When an inmate receives care from a psychiatrist, a mental health clinician is present during the visit to take notes and document modifications to the treatment plan as needed. The psychiatrist oversees Mental Health Treatment team meetings, which are conducted between the psychiatrist, clinician, and inmate. To expand coverage of psychiatric services, on January 14, 2008, DOC launched a tele-psychiatry program. This program allows the psychiatrist located in the Northern region of Delaware to provide services to offenders at SCI through a video-conferencing system. CMS and DOC are working to expand the tele-psychiatry program to enhance the psychiatric services offered at the Facilities.

(31) Administration of Mental Health Medications:

CMS has adopted a set of clinical protocols that set forth laboratory tests required for patients being treated with certain psychotropic medications. A psychiatric nurse is assigned at DCC for the SNU housing units. The nurse monitors psychiatric medications prescribed to offenders in this unit to ensure continuity of the medications and evaluate potential side effects. All medication, including psychotropic medication, is documented on the offender's MAR. Additional monitoring of compliance with policies and protocols relating to the administration of mental health medications occurs through quarterly DOC-CMS contractual audits and the Facility's quality assurance process. In particular, these tools are used to ensure that prescribed medications are received in a timely manner. These processes are also used to monitor and improve medication continuity, adherence to daily medication administration schedules, and the maintenance of appropriately documented MARs.

(32) Mental Illness Training:

During the seven-hour initial training course regarding “Special Medical Topics,” DOC staff receives instruction on various issues regarding mental illness. The course is taught by a qualified health professional from CMS. This training teaches DOC staff to make observations based on mental health needs and to request behavioral observation and referral to Mental Health Staff when needed. Refresher training for this topic is provided every three years; the last training was performed in 2005, and the next refresher training is scheduled to occur in 2008. Logs of employee training and attendance are maintained by the DOC Employee Development Center, located at the DOC Central Administration Building, and are available for inspection by the Monitoring Team.

(33) Mental Health Screening:

As noted in the Screening and Treatment section of this report, a mental health screening is performed on each incoming inmate as part of the initial intake screening. If an inmate answers “yes” to any questions on the mental health portion of the screening, the inmate automatically receives a mental health referral through the DACS system and assessment by a mental health professional within twenty-four hours. Additionally, as is discussed in greater detail below and in ¶ 10, the nurse performing an intake screening has discretion to refer an offender to mental health if the referral is believed to be necessary, even in the absence of positive responses on the mental health portion of the screening.

(34) Mental Health Assessment and Referral:

Any medical or mental health professional can refer an inmate to psychiatry. Additionally, any DOC or vendor staff can ask for a mental health assessment if the situation warrants. The inmate will be seen for a mental health assessment, which is to be completed within five to ten days from the date of the referral. To assure confidentiality, any self-referrals for mental health treatment are made through the sick call procedure. Random audits of sick call pick-up logs and quarterly use of the Audit Tool at all Facilities help ensure adequate response times to sick call requests for mental health issues.

(35) Mental Health Treatment Plans:

Treatment plans are initiated by a mental health professional at the first visit and reviewed at least every three months by the Mental Health Treatment team. Each Facility maintains a Mental Health roster that lists each individual inmate who is receiving mental health services, their diagnosis and current mental health medications. The list also specifies the date of the next treatment plan review scheduled for the inmate to ensure that the reviews are performed in a timely manner. Inmate mental health treatment plans are maintained in the inmate's unified medical record.

(36) Crisis Services:

When a crisis situation occurs, the inmate is immediately assessed by a mental health professional. Less severe situations could involve an inmate who requires only short-term monitoring or psychiatric observation. The most extreme cases result in referral and transfer to the Delaware Psychiatric Center ("DPC") or an acute care facility, if needed. The OHS meets on a monthly basis with DPC staff and DOC security to discuss the movement of DOC inmates to and from DPC, in order to promote continuity of care for the offender. When clinically necessary, an inmate at the Facility who becomes a risk for harm to self or others may require therapeutic restraints or involuntarily medication. A DOC policy regarding use of involuntary medication has been submitted to the DOJ for approval. Since January 2008, eight offenders were given involuntary medication under such circumstances, and eight offenders required therapeutic restraints. When these measures are not successful in stabilizing the inmate, the inmate is transported to an acute care hospital. DOC policies prohibit the use of administrative/disciplinary isolation in response to psychiatric emergencies.

(37) Treatment for Seriously Mentally Ill Offenders:

Currently there are various programs for offenders with mental health needs that include screening, assessment, routine mental health counseling (occurring on a monthly basis, at minimum), psychopharmacological intervention with a review by a psychiatrist at least every 90 days, group treatment, SNU housing and psychiatric observation for offenders who are either suicidal or have decompensated to the extent that they cannot be safely managed in their normal housing unit. If an inmate cannot be managed with mental health services provided at the Facility, a referral to Delaware Psychiatric Center is made.

At DCC, there are currently 2 SNU housing units located in the maximum security tiers of the Facility. At the suggestion of the Monitoring Team, one of the SNU housing units is in the process of being relocated to the general population housing area of DCC. Offenders in the SNU program, who have been classified as eligible for general population housing due to their security status, will be reviewed for eligibility to the general population SNU housing unit. Housing in the general population compound will afford the offender additional opportunities for employment, commissary privileges, programming and other activities not afforded to the maximum security inmate.

(38) Review of Disciplinary Charges for Mental Illness Symptoms:

DOC has drafted a policy that requires medical staff to review the medical records of all offenders who are placed in segregation and is currently awaiting DOJ approval. The policy will require that when medical staff identify that an inmate placed in isolation has a history of mental illness, a referral be made to mental health staff. Mental health staff will be required under the new policy to perform a follow-up assessment to identify any contraindications to the placement in segregation. If any DOC or CMS staff believe that an inmate's mental health condition is related to or may have contributed to their disciplinary charges, the inmate will be referred to a mental health professional for assessment. The mental health professional will provide recommendations based on that assessment to the security staff conducting the disciplinary hearing.

(39) Procedures for Mentally Ill Offenders in Isolation or Observation Status:

As noted above, based on the inmate's medical history, a referral is made to mental health for offenders placed in isolation who are currently receiving mental health treatment. The number of rounds performed by mental health staff exceeds the once a week requirement established in the MOA; mental health rounds on offenders in segregation occur three times each week. The Facility psychiatrist is required to review documentation regarding the mental health rounds. As is discussed in ¶ 38, mental health staff communicates any concerns regarding contraindications to segregation, and custody staff is required to respond appropriately.

(40) Mental Health Service Logs and Documentation:

As noted above, the mental health clinicians at each Facility maintain a Mental Health roster listing each individual receiving mental health services, diagnosis, mental health medications and dates for upcoming mental health treatment appointments. The roster is currently accessible by all mental health employees at each Facility.

SUICIDE PREVENTION

(41) Suicide Prevention Policy:

On November 19, 2007, DOC implemented its Suicide Prevention Policy. On May 9, 2008, DOC submitted revisions to its November 19, 2007 policy at the recommendation of the Monitoring Team. DOC is awaiting approval from DOJ prior to implementing its suggested revisions and corresponding documents.

(42) Suicide Prevention Training Curriculum:

DOC worked collaboratively with the Monitoring Team Mental Health experts to draft the Suicide Prevention Training Curriculum and policy. The curriculum, at a minimum, addresses the DOC Suicide Prevention policy, the ways in which the Facility environment may contribute to suicidal behavior, potential predisposition factors to suicide, high risk suicide periods, case studies of recent suicides and serious suicide attempts, mock demonstrations and proper use of emergency equipment. Further, DOC is currently drafting its curriculum for Suicide Prevention refresher training. The curriculum will be sent to the Monitoring Team for approval prior to implementation.

(43) Staff Training:

The DOC Action Plan states that Suicide Training will be provided to the entire DOC security staff by January 1, 2008. As of the date of this report, Facilities report that all security staff available have received the required training. Courses are ongoing, and will continue to be provided to all new hires after existing staff are trained. Each Facility training coordinator maintains training records. Copies of the training records are also sent to CMS to record medical and mental health staff attendance of Suicide Prevention training at all Facilities. Additional

copies of the training records are maintained at the DOC Central Administration Building by the OHS Senior Fiscal Administrative Officer, and are available for the Monitoring Team's review.

(44) Intake Screening/Assessment:

Currently, the DOC uses an intake screening that covers all of the required areas listed in the MOA. A mental health assessment is provided for those patients whose screening indicates any positive answer to the screening tool.

(45) Mental Health Records:

An inmate who reports a significant medical or mental health history or recent mental health hospitalization at intake is asked to complete a release of information form. The medical and mental health staff requests the relevant medical documents from outside providers. The CMS medical records staff is responsible for forwarding the request for documents to the appropriate health care provider(s). Once received, the records are filed with and become a part of the inmate's unified medical record. CMS is currently working to improve the process of obtaining relevant information from the outside providers.

(46) Identification of Offenders at Risk of Suicide & (47) Suicide Risk Assessment:

When an inmate is identified as at risk for suicide, the inmate is kept under constant supervision, mental health/medical is contacted immediately and an order is obtained to place the inmate on suicide precautions. The inmate is also assessed by a qualified mental health professional as soon as possible and no later than twenty-four hours after the risk has been identified.

(48) Communication:

All steps taken relating to inmate suicide precautions are documented by the CMS and DOC staff responsible for carrying out those steps, and become part of the inmate's unified medical record. Multi-disciplinary team meetings are also conducted on a weekly basis regarding the inmate's stability and their status on suicide precautions. Offenders are not downgraded or discharged from suicide precautions until the responsible medical and mental health care staff has thoroughly reviewed the inmate's health care record. Mental health staff is instructed to discuss patient progress with custody staff when making decisions regarding downgrade or discharge of observation status.

(49) Housing:

Pursuant to DOC policy, all cells used to house offenders on suicide watch are visible to correctional staff, and steps have been taken to improve suicide resistance in cells used for this purpose. For example, breakaway sprinkler heads have been installed where needed in cells used for suicide watch. Mental Health staff determines the level of restriction (what items an inmate may have in their cell) that is appropriate for the inmate based on clinical judgment.

(50) Observation:

At the highest level of psychiatric observation, offenders are observed on a constant basis. Offenders on all levels of psychiatric observation will also be observed on a constant basis while bathing and shaving. All other offenders on observation are monitored at least every fifteen minutes by correctional staff and during each shift by medical staff. A physician performs a physical assessment whenever an inmate is placed on observation. Further, mental health staff assesses and interacts with all offenders on psychiatric observation status on a daily basis.

(51) “Step-Down Observation”:

Currently, DOC has implemented policies and procedures that require step-down levels of observation to be utilized when offenders are released from suicide precautions. All offenders on psychiatric observation can only be downgraded or removed from observation status with an order from a licensed psychologist or psychiatrist. Follow-up assessments are conducted initially within twenty-four hours following discharge from suicide precautions and subsequently as clinically indicated on the individual treatment plan. The DOC-CMS Audit Tool is used to ensure compliance of appropriate suicide observation and follow up treatment on all offenders who were on observation status for the quarter prior to the audit.

(52) Intervention:

This topic is covered under the DOC’s response to First Aid/CPR training and Suicide Prevention Training.

(53) Mortality and Morbidity Review:

Current policy requires a mortality and morbidity review to be accomplished in the event of a suicide or a serious suicide attempt. Since January 2008, there have been six serious suicide attempts by offenders at the Facilities. Mortality and morbidity reports have been or will be completed in each case, are maintained at the DOC Central Administration Building, and are available for review by the Monitoring Team.

QUALITY ASSURANCE

(54) Policies and Procedures and (55) Corrective Action Plans:

DOC policies address a number of quality assurance processes. A Quality Improvement Program has been implemented, and is monitored by the Facility HSA and Regional DON. Each Facility will also maintain a Quality Improvement Committee (“QI Committee”) to review the implementation, maintenance and monitoring of the Quality Improvement Program. The Facility Quality Improvement Committee will meet on a monthly basis to discuss its findings and issue corrective action plans when appropriate.

A Statewide Quality Improvement Committee reviews implementation, maintenance, and monitoring of quality improvement programs at the Facilities. The QI Committee meets on a quarterly basis, reviews all minutes and quarterly reports submitted by the Facility QI committees, and makes recommendations to the Commissioner of Correction as necessary. Further, an annual report will be generated to the Commissioner summarizing areas that have been improved in the past year and those which need improvement. DOC and CMS have formed the committees at the Facility and state levels and have also begun the QI process scheduled for the 2008 calendar year. In February 2008, a member of the Monitoring Team provided education and critique of the current process. Adjustments and enhancements to the QI process at each Facility are ongoing. Copies of the Facility QI Committee and Statewide QI Committee are maintained at the CMS regional office and available for review at the Monitoring Team’s request.

